

**Letter of Findings: 09-0103**  
**Withholding Tax**  
**For the Years 2006, 2007, and 2008**

**NOTICE:** Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective in its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUES**

**I. Tax Administration – Interest.**

**Authority:** IC § 6-8.1-10-1.

Taxpayer protests the imposition of interest.

**II. Tax Administration – Penalty.**

**Authority:** IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of the ten percent negligence penalty.

**STATEMENT OF FACTS**

Taxpayer is an Indiana non-profit organization. The Department of Revenue ("Department") notified Taxpayer of its failure to remit to the State of Indiana 2006, 2007, and 2008 withholding taxes that Taxpayer had collected. Taxpayer remitted the withholding tax. However, Taxpayer protests the interest and penalty imposed by the Department. The Letter of Findings is based on the information in the file. Additional facts will be provided as necessary.

**I. Tax Administration – Interest.**

**DISCUSSION**

The Department assessed interest on the tax liabilities. Taxpayer protests this imposition of interest.

IC § 6-8.1-10-1(a) provides, as follows:

If a person fails to file a return for any of the listed taxes, fails to pay the full amount of tax shown on the person's return by the due date for the return or the payment, or incurs a deficiency upon a determination by the department, the person is subject to interest on the nonpayment.

Pursuant to IC § 6-8.1-10-1(e), the Department does not have the authority to waive the interest.

**FINDING**

Taxpayer's protest on the imposition of interest is respectfully denied.

**II. Tax Administration – Penalty.**

**DISCUSSION**

Taxpayer also protests the imposition of the negligence penalty.

Pursuant to IC § 6-8.1-10-2.1, the Department may assess a ten (10) percent negligence penalty if the taxpayer:

- (1) fails to file a tax return;
- (2) fails to pay the full amount of tax shown on the tax return;
- (3) fails to remit in a timely manner the tax held in trust for Indiana (e.g., a sales tax); or
- (4) fails to pay a tax deficiency determined by the Department to be owed by a taxpayer.

[45 IAC 15-11-2](#)(b) further states:

"Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department may waive a negligence penalty as provided in [45 IAC 15-11-2](#)(c), in part, as follows:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice,

etc.;

(5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Here, Taxpayer stated that, as a non-profit organization, it depends on volunteers to complete most of the work. Taxpayer further claimed that during the transition between volunteers, its payroll reports were overlooked.

Taxpayer has not timely remitted the withholding taxes since 1999. Withholding tax is a trust tax. Taxpayer is an agent of the State of Indiana, and should have collected and remitted withholding tax timely. Additionally, Taxpayer did not provide any documentation to demonstrate that Taxpayer's failure to remit withholding taxes is due to reasonable cause, not negligence.

#### **FINDING**

Taxpayer's protest on the imposition of negligence penalty is respectfully denied.

#### **SUMMARY**

Taxpayer's protest on imposition of interest is respectfully denied. Taxpayer's protest on imposition of negligence penalty is also respectfully denied.

*Posted: 06/24/2009 by Legislative Services Agency*

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